

1 Cyndie M. Chang (SBN 227542)
2 Katherine L. Nichols (SBN 228893)
3 Audra L. Thompson (SBN 218479)
4 **DUANE MORRIS LLP**
5 865 South Figueroa Street, Suite 3100
6 Los Angeles, CA 90017-5450
7 E-mail: knichols@duanemorris.com

8 Attorneys for **GLOBAL EXCEL**
9 **MANAGEMENT, INC.**

10

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13

14 JOHN MUIR HEALTH, a California non-
15 profit public benefit corporation,

16 Plaintiff,

17 V.
18 GLOBAL EXCEL MANAGEMENT, INC.,
19 a Canadian for-profit corporation, and DOES
20 1 THROUGH 25, inclusive,

21 Defendants.

22 Case No.: 3-14-cv-04226-DMR
23 Hon. Magistrate Judge Donna M.
24 Ryu

25

26 **NOTICE OF MOTION AND
MOTION TO DISMISS
PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE
12(B)(6); MEMORANDUM OF
POINTS AND AUTHORITIES**

27 Date: November 13, 2014
28 Time: 11:00 a.m.
Ctrm: 4

29

30 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

31 PLEASE TAKE NOTICE than on November 13, 2014 at 11:00 a.m., or as soon
32 thereafter as the matter may be heard, in Courtroom 4, 3rd Floor of the above-
33 captioned Court, located at 1301 Clay Street, Oakland, California 94612, before the
34 Honorable Magistrate Judge Donna M. Ryu, Defendant Global Excel Management,
35 Inc. shall move and hereby does move to dismiss Plaintiff John Muir Health's
36 Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

37 This Motion is based on this Notice of Motion and Motion, the accompanying
38 Memorandum of Points and Authorities, the pleadings, records and files in this action,

39

40 **DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS**
41 **CASE NO. 3-14-CV-04226-DMR**

1 and such other written or oral argument as may be presented at or before the time this
 2 Motion is taken under submission by the court.

3 **ISSUE TO BE DECIDED**

4 Whether a private right of action exists under The Knox-Keene Health Care
 5 Service Plan Act of 1975, Cal. Health & Safety Code §§ 1340-1399.835; specifically,
 6 whether a private right of action exists under Cal. Health & Safety Code § 1371.4 as a
 7 stand-alone claim.

8 **I. INTRODUCTION**

9 Defendant Global Excel Management, Inc. (“Global”) respectfully requests that
 10 this Court dismiss the Complaint of Plaintiff John Muir Health (“John Muir Medical
 11 Center”), which alleges in its second cause of action a violation of California Health
 12 & Safety Code section 1371.4. Although California law provides that remedies for
 13 violations of section 1371.4 may be pursued through California’s Unfair Competition
 14 Law¹ and common law theories of recovery, section 1371.4 does not provide for any
 15 independent right of action by private parties. Accordingly, the cause of action should
 16 be dismissed under Federal Rule of Civil Procedure 12(b)(6).

17 **II. FACTS ALLEGED IN THE COMPLAINT²**

18 Plaintiff John Muir Medical Center is a non-profit public benefit corporation
 19 that provides medical care to patients. Complaint, ¶ 1. Defendant Global is a
 20 Canadian for-profit corporation with its principal place of business in Quebec,
 21 Canada. Complaint, ¶ 2. Global is in the business of arranging for the provision of
 22 health care services to its enrollees and/or paying for or reimbursing part or all of the
 23 cost for those services. *Id.*

24 Plaintiff’s Complaint identifies two patients for which it seeks reimbursement
 25 of health care costs. On July 18, 2012, John Muir Medical Center provided

26 ¹ Cal. Bus. & Prof. Code § 17200 *et seq.*

27 ² Global disputes many of the allegations asserted in the Complaint, but for purposes of this
 28 present motion to dismiss treats the allegations as true.

1 emergency medical treatment to an individual with the initials L.T. Between March
 2 19, 2013 and April 1, 2013, John Muir Medical Center provided emergency medical
 3 treatment to an individual with the initials P.C. Complaint, ¶ 8. Both patients were
 4 enrolled in a health care service plan sponsored and/or administered by Global.
 5 Complaint, ¶ 8. Global held itself out to be the responsible payor for services
 6 provided to L.T. and P.C. Complaint, ¶ 10.

7 John Muir Medical Center and Global did not have a written agreement
 8 regarding reimbursement rates for medical care. Complaint, ¶ 9. The total billed
 9 charges from John Muir Medical Center for the treatment of L.T. amounted to
 10 \$58,525.00 and for the treatment of P.C. in the amount of \$551,652.02 for a total of
 11 \$610,177.02, which John Muir Medical Center submitted to Global for payment.
 12 Complaint, ¶¶ 14-15. Global paid a total of \$149,966.12 to John Muir Medical Center
 13 for the medical services provided to both patients L.T. and P.C., but has not paid the
 14 remaining \$459,985.90. Complaint, ¶¶ 17-18.

15 The Complaint's second cause of action alleges "Violation of Cal. Health &
 16 Safety § 1371.4" only as it relates to patient L.T. Complaint, ¶¶ 27-34. John Muir
 17 Medical Center seeks damages under the second cause of action as to L.T. in the
 18 amount of \$43,654.24. Complaint, ¶ 34.

19 **III. ARGUMENT**

20 **A. Legal Standard for Motion to Dismiss Under Rule 12(b)(6)**

21 A motion to dismiss should be granted where a party fails to state a claim upon
 22 which relief can be granted. Fed. R. Civ. P. 12(b)(6). Although detailed factual
 23 allegations are not required to survive a Rule 12(b)(6) motion to dismiss, a complaint
 24 that "offers 'labels and conclusions' or 'a formulaic recitation of the elements of a
 25 cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
 26 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Rather, the complaint must
 27 allege sufficient facts to support a plausible claim for relief. *Id.*

1 In evaluating a Rule 12(b)(6) motion, the Court must engage in a two-step
 2 analysis. First, the Court must accept as true all non-conclusory, factual allegations
 3 made in the complaint. *Id.* Second, after accepting as true all non-conclusory
 4 allegations and drawing all reasonable inferences in favor of the plaintiff, the Court
 5 must determine whether the complaint alleges a plausible claim to relief. *See Iqbal*,
 6 556 U.S. at 678-79. Despite the liberal pleading standards of Rule 8 of the Federal
 7 Rule of Civil Procedure, conclusory allegations will not save a complaint from
 8 dismissal. *Id.*

9 **B. As there Is No Private Right of Action under California Health and**
 10 **Safety Code Section 1371.4, the Complaint Must Be Dismissed**

11 John Muir Medical Center's Complaint alleges in its second cause of action a
 12 violation of California Health and Safety Code section 1371.4. Section 1371.4 is part
 13 of the Knox-Keene Health Care Service Plan Act of 1975, Cal. Health & Safety Code
 14 §§ 1340-1399.835 ("Knox-Keene Act"). *California Medical Ass'n, Inc. v. Aetna U.S.*
 15 *Healthcare of Calif., Inc.*, 94 Cal. App. 4th 151, 155 n.3 (2001). The Knox-Keene Act
 16 is a "comprehensive system of licensing and regulation." *Id.* (quoting *Van de Kamp v.*
 17 *Gumbiner*, 221 Cal. App. 3d 1260, 1284 (1990))

18 The Knox-Keene Act expressly authorizes the California Department of
 19 Managed Care to enforce its provisions; however, it does not include a parallel
 20 authorization for suits by private parties. *Blue Cross of Calif., Inc. v. Superior Court*,
 21 180 Cal. App. 4th 1237, 1250 (2009). While California courts have held that a private
 22 party may pursue claimed violations of the Knox-Keene Act under California's Unfair
 23 Competition Law or common law claims of recovery, *see e.g.*, *Coast Plaza Doctors*
 24 *Hospital v. UHP Healthcare*, 105 Cal. App. 4th 693, 706 (2002) ("The Knox-Keene
 25 Act...contemplates that a health care plan may be held liable under theories based on
 26 other law"), there is no stand-alone cause of action for private parties for violations of
 27 the Act, *see Ochs v. PacifiCare of Calif.*, 115 Cal. App. 4th 782, 792 (2004) (Knox-
 28 Keene Act provision "does not establish an independent basis of liability for health

1 care payments"); *California Medical Ass'n*, 94 Cal. App. 4th at 170 ("[The UCL] does
 2 not confer on private part[ies] a general power to enforce Knox-Keene"); *Regents of*
 3 *the University of California v. Global Excel Management, Inc.*, 2010 U.S. Dist.
 4 LEXIS 136552 at * 11-12 (Dec. 10, 2010) (granting motion to dismiss stand-alone
 5 claim for violation of section 1371.4).

6 Thus, in the *Regents of the University of California* case, the District Court for
 7 the Central District of California granted a motion to dismiss a claim for violation of
 8 section 1371.4 with prejudice, finding that any enforcement of section 1371.4 is
 9 "limited to other statutes, like California's Unfair Competition Law, or common law
 10 doctrines such as 'equitable indemnity, comparative negligence, contribution,' or
 11 'quantum meruit.'" *Regents of the University of California*, 2010 U.S. Dist. LEXIS
 12 136552 at * 11-12 (citing *Coast Plaza Doctors Hosp.*, 105 Cal. App. 4th at 706-07).
 13 Because California law does not provide for any independent right of action under
 14 section 1371.4, John Muir Medical Center's claim similarly must be dismissed.

15 **C. Leave to Amend Should Be Denied**

16 There is no evidence that additional time to amend the complaint could improve
 17 or remedy the legal defects in Plaintiff's cause of action. Further, it appears that
 18 Plaintiff would have no further information to supplement its complaint to state a
 19 claim upon which relief can be granted for its second cause of action, even if given the
 20 opportunity for leave to do so.

21 **IV. CONCLUSION**

22 Based on the foregoing, Global respectfully requests that the Court grant its
 23 motion to dismiss Plaintiff's second cause of action without leave to amend.

24 Dated: September 25, 2014 **DUANE MORRIS LLP**

25
 26 By: /s/ Katherine L. Nichols
 27 Cyndie M. Chang
 Katherine L. Nichols
 Audra L. Thompson
 Attorneys for Defendant
 28 Global Excel Management, Inc.